

RESOLUTION NO. A-_____

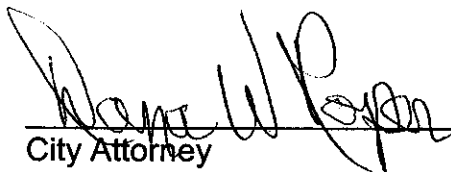
1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the attached License Agreement between the City of Lincoln and the
3 Cornhusker Council, Inc. of the Boy Scouts of America, for the temporary use of portions of
4 Mahoney Park to erect seasonal light displays for public viewing for a ten-year term is
5 hereby approved and the Mayor is authorized to execute said License Agreement on
6 behalf of the City.

7 The City Clerk is directed to return one fully executed copy of said Interlocal
8 Agreement to Lynn Johnson, Parks and Recreation Dept., for transmittal to the Cornhusker
9 Council.

Introduced by:

Approved as to Form & Legality:


City Attorney

Approved this ____ day of _____, 2003:

Mayor

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into this _____ day of _____, 2003, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as "City," and the CORNHUSKER COUNCIL, INC. OF THE BOY SCOUTS OF AMERICA, a Nebraska non-profit corporation, hereinafter referred to as the "Boy Scouts" for the temporary use of portions of Mahoney Park.

WHEREAS, the Boy Scouts desire a suitable site to erect lighted holiday displays for the enjoyment of citizens;

WHEREAS, the use of the park by the Boy Scouts would occur at times the park would normally be closed to the general public;

WHEREAS, this activity is compatible with existing park uses and would expand the seasonal pastime opportunities for citizens;

WHEREAS, this License Agreement would not interfere with other regular park uses;

WHEREAS, this License Agreement will provide the City with revenue to be used for the general welfare.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties as follows:

1. **Location.** The City shall allow the Boy Scouts to erect lighted holiday displays throughout that portion of Mahoney Park as shown on Attachment "A" which is made a part hereof as if set out fully. No other areas of the park shall be provided to the Boy Scouts and this License Agreement shall in no way limit the normal park functions or its use by the general public during daytime park hours.

2. **Term.** The City hereby grants to the Boy Scouts a License Agreement for a period of ten years commencing upon the signing of this License Agreement and ending ten years from that date unless otherwise terminated as provided herein. At the conclusion of the ten year period this License Agreement may be extended, modified, or re-written as the parties may mutually agree.

3. **Time Period.** The City will allow the Boy Scouts to use Mahoney Park at the following times: (a) The Boy Scouts may begin to erect displays ten days prior to the opening of the event. (b) The Boy Scouts shall be permitted to conduct the event from the third Friday in November until and including the first Sunday in January of each year of this License Agreement. The use allowed under this License Agreement shall be from 4:00 p.m. until 10:00 p.m. The Boy Scouts may perform maintenance on the displays during normal park hours. The Boy Scouts will submit a security plan to the Lincoln Police Department and the Director of Parks and Recreation for their approval. This plan may include security all night.

At the conclusion of the event all displays must be removed from the park no later than 10 days after the event closing and the park restored to its prior condition, except that all new

permanent electric service installed for the event shall remain the property of the City and shall not be removed.

4. Park Access. Both parties agree and understand that the park will be kept open and accessible to foot traffic between the hours of 5:00 a.m. to 5:00 p.m. daily for normal park activities. Vehicular access to the park will be limited to the entrance road and the west parking lot between 5:00 a.m. and 4:00 p.m. daily as shown on Attachment "A". The Boy Scouts may barricade the remaining portion of the park loop road to minimize the potential for vandalism to lighted displays during daylight hours. It is understood that vehicles are driven through the lighted display without headlights on. Therefore, the foot traffic will be limited to park pathways after 5:00 p.m. daily to minimize the potential for conflicts between vehicles and pedestrians.

5. Responsibilities. All plans for electrical service and displays shall be presented to the City for its approval prior to installation. The Boy Scouts will, at their own expense, pay for the cost of installing and maintaining electrical service for the displays. Should damage be caused to the electrical service by City employees, the City will be responsible for repair. Should damage be caused to the electrical service during the period of use each year, the Boy Scouts will be responsible for repair.

The Boy Scouts shall have the right to make any necessary repairs or undertake necessary maintenance regarding the electrical service from the transformers to the electrical boxes in the park subject to the prior approval of the Director of Parks and Recreation, which shall not be unreasonably withheld.

Each party shall be responsible for any turf damage to the park that it has caused. The Boy Scouts will be responsible for repair of turf damage occurring during the period of use each year. The Boy Scouts will not be responsible for repair of turf damage resulting from vandalism or malicious mischief occurring outside of the 4:00 PM to 10:00 PM time period during the period of use each year.

6. Staffing. The Boy Scouts shall provide all staffing necessary to serve the needs of the public attending this event. The Boy Scouts shall also provide security for the event and the displays at a level specified by the Lincoln Police Department. Staffing levels will include supervision of all areas used by the Boy Scouts and will provide a high level of service in the collection of entrance fees. The Boy Scouts will also provide needed staffing to remove litter and trash from the park on a daily basis in order that it may be maintained in a clean condition.

7. Additional Equipment. The Parks and Recreation Department will provide trash barrels to be placed at locations within the park agreed upon by the parties. The City will provide one (1) dumpster and at least one (1) portable restroom that is handicap accessible in the park during the set up, display and removal period each year. These items will be provided under the City contract for the associated services. The Boy Scouts will reimburse the City for the cost of providing the dumpster and portable restroom(s) during the period of use each year.

8. City Responsibilities. The City shall provide all staff and vehicles necessary to remove snow from the display roadways and parking areas in accord with City practices.

9. **Consideration.** The Boy Scouts will pay the City a park user fee of \$100 per day of the period for setting up, displaying and removing lighted displays each year as defined in Section 3, payable on August 1st of each year, plus two (2) percent of gross revenue from vehicle admissions.

Vehicle admission fees will be established by the Boy Scouts with approval by the Director of Parks and Recreation.

The Boy Scouts may set up and operate a temporary concession providing food and/or non-alcoholic beverages in conjunction with the holiday lights event. The Boy Scouts shall provide a menu of food and beverage items and prices prior to set up of the event to the Parks and Recreation Director for review and approval. The Boy Scouts will provide an accounting of gross concession sales, and will pay to the City an amount equal to two (2) percent of gross sales.

Payment of the percentage of gross revenue for vehicle admission fees and concession sales is due on or before January 31 of each year of this License Agreement. A complete accounting of all receipts shall be submitted with the payment and shall include a daily accounting of all cars entering, bus totals, total revenue received and all complimentary passes issued and daily accounting of concession sales. The City reserves the right to audit the financial records of the Boy Scouts relating to this event.

All payments shall be mailed to the City at:

Lincoln Parks and Recreation Department
2740 A Street
Lincoln, NE 68502

10. **Inspection.** The Boy Scouts recognize that the City has a duty to insure that the premises of Mahoney Park are maintained in the best interest of the public. The Boy Scouts recognize the right and obligation of the City to maintain order and a healthy environment to insure the general welfare of the public, and the City's power of supervision and control of the use of the park. Nothing herein shall be construed to divest the City of its legislative or administrative authority. The Boy Scouts shall operate and conform with all park regulations submitted to the Boy Scouts by the Parks and Recreation Department and the ordinances of the City, laws of the State of Nebraska, and the Constitution of the United States, and give assistance to the City in seeking conformity with such regulations.

Further, the Boy Scouts agree to comply with and enforce all rules and regulations adopted by the City and/or City's Director of Parks and Recreation.

11. **Improvements.** The Boy Scouts agree to do no remodeling nor to install any permanent fixtures or additions to the park without first obtaining the written approval of the City. All permanent improvements shall become the property of the City upon termination of this License Agreement unless the parties hereto agree otherwise.

12. **Risk of Loss.** City is not in any way responsible for the property of the Boy Scouts or any of its employees, agents, invitees kept, stored, or maintained on the premises and in no way assumes responsibility for any loss of property through fire, theft, pilferage, malicious mischief, or

any other happening whatsoever, however, the Boy Scouts may recover from the City for its gross or willful negligence.

13. Advertising. No display sign or advertising, except 3 x 5 foot sponsor signs approved by the City and a 4 x 8 foot sign at the entrance approved by the City, shall be placed on the grounds, structure, or affixed in any manner. In addition, the Boy Scouts may place a lighted mobile sign with a maximum area of 32 square feet to promote special activities during the display period. No advertising is permitted except upon the written approval of the City in advance, and in no instance will commercial advertising be permitted or allowed.

14. Fair Employment Practices. The Boy Scouts shall not discriminate against any employee or any applicant for employment, to be employed in the performance of this License Agreement, with respect to his compensation, terms, advancement potential, conditions, or privileges of employment because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status, pursuant to the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. § 48-1122 (Reissue 1998, as amended).

15. Fair Labor Standards. The Boy Scouts under this License Agreement shall maintain fair labor standards in the performance of the contract as required by Neb. Rev. Stat. §§ 73-101, et seq. (Reissue 1998, as amended).

16. Unemployment Compensation. The Boy Scouts, where applicable, shall be required to pay to the Unemployment Compensation Fund of the State of Nebraska under the provisions of the Nebraska Employment Security Law, Neb. Rev. Stat. §§ 48-601, et seq. (Reissue 1998, as amended) on wages paid to individuals employed by the Boy Scouts in the performance of the License Agreement.

17. No Partnership, Joint Venture or Principal/Agent Relationship Created. Nothing in this License Agreement shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the parties.

18. Cumulative Rights. No right or remedy given in this License Agreement to the Boy Scouts or the City is intended to be exclusive of any other right or remedy hereof provided by law. Each right and each remedy shall be cumulative and in addition to every other right or remedy given in this License Agreement or now or hereafter existing at law or in equity or by statute.

19. "As Is". The Boy Scouts agree that it is accepting this premises "as is," that the Boy Scouts have inspected the premises and have determined the premises to be suitable for the uses they intend. No representations have been made by the City as to the condition of the property or utilities. The City will continue to perform its usual and customary maintenance on the park as allowed by its budget.

20. Assignment and Subletting. The Boy Scouts may not assign or transfer this License Agreement or any interest in this License Agreement or any portion of the License Agreement without the prior written consent of the City in each instance.

21. Hazardous Material. The Boy Scouts shall not intentionally or negligently cause or permit any hazardous material to be brought upon, kept, or used in or about the premises by the

Operator, its agents, employees, contractors, or invitees, without the prior written consent of the City (which City shall not unreasonably withhold as long as the Boy Scouts demonstrate to City's reasonable satisfaction that such hazardous material is necessary or useful to Boy Scouts' business and will be used, kept and stored in a manner that complies with all laws regulating any such hazardous material so brought upon or used or kept in or about the premises). If the Boy Scouts breach the obligations stated in the preceding sentence, or if the presence of hazardous material on the premises caused or permitted by the Boy Scouts result in contamination of the premises, or if contamination of the premises by hazardous material otherwise occurs therefrom, the Boy Scouts shall indemnify, defend and hold City harmless from any and all claims, judgment, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees) which arise during or after the License Agreement term as a result of such contamination. This indemnification of City by the Boy Scouts includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedials, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or ground water on or under the premises. Without limiting the foregoing, if the presence of any hazardous material on the premises caused by or permitted by the Boy Scouts results in any contamination of the premises, the Boy Scouts shall promptly take all actions at its sole expense as are necessary to return the premises to the condition existing prior to the introduction of any such hazardous material to the premises; provided that City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the premises. As used herein, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority or the United States Government.

22. Construction Liens. The Boy Scouts hereby agree that the Boy Scouts will not permit or allow any construction, mechanic's or materialman's liens to be placed on the City's interest in the premises during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the City's interest, the Boy Scouts shall take all steps necessary to see that it is removed within 30 days of its being filed; provided, however, that the Boy Scouts may contest any such lien, provided the Boy Scouts first post a surety bond in favor of and insuring the City in an amount sufficient to remove the lien pursuant to the terms of the Nebraska Lien Law.

23. ADA Clause.

A. The Boy Scouts, at their sole cost and expense, shall comply with all requirements of the Americans with Disabilities Act with respect to the Boy Scouts' activities in the demised premises and modification of nonstructural components of the demised premises.

B. The Boy Scouts shall defend, save harmless, and indemnify the City from any costs, expense, or liability (including reasonable attorneys fees and other costs of defense) arising out of the Boy Scouts' failure to fulfill its obligations under this License Agreement with respect to the Americans with Disabilities Act.

C. If the source of the ADA violation is the park or the park property itself, then the City will be responsible for making the correction.

24. Insurance. The Boy Scouts shall purchase such insurance as shall protect the Boy Scouts from claims which may arise out of or result from the Boy Scouts' operation under the License

Agreement for which the Boy Scouts may be legally liable, whether such operations be by the Boy Scouts themselves or by anyone directly or indirectly employed by the Boy Scouts or by anyone for whose acts any of them may be liable. The insurance required shall be written for not less than the following amounts:

Workers' Compensation

State - Statutory
Federal - Statutory

Commercial General Liability

Bodily Injury and Property Damage
- \$1,000,000 combined single limit
each occurrence
- \$2,000,000 aggregate

All liability insurance policies shall be written on an occurrence basis only, shall be endorsed to add the City of Lincoln, its agents, and employees as an additional insured as related to this License Agreement and shall be maintained without interruption from the date of the commencement of the work until the date of termination. All insurance coverages are to be placed with an insurance company authorized to do business in the State of Nebraska and shall be placed with an insurer that has an AM best rating of not less than A:VII, unless specific written approval has been granted by the City to deviate from this requirement. The Boy Scouts shall not commence work under this License Agreement until the insurance required under this section has been approved by the City Attorney for the City of Lincoln. All certificates of insurance evidencing such coverages shall be filed with the License Agreement showing the specific limits of insurance coverage required and any deductibles required. Such certificate shall specifically state the insurance policies are to be endorsed to require the insured to provide the City of Lincoln 30 days notice of cancellation, nonrenewal, or any material reduction of insurance coverage.

25. Operator to Hold City Harmless. To the fullest extent permitted by law, the Boy Scouts shall indemnify, defend, and hold harmless the City, its agents, and employees from and against claims, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of, resulting from or related to the License Agreement that results in any claim for damage whatsoever including, without limitation, any constitutional or civil rights litigation, bodily injury, sickness, disease, death, or injury to or destruction of tangible or intangible property, including the loss of use resulting therefrom that is caused in whole or in part by the Boy Scouts or anyone directly employed by the Boy Scouts, or anyone for whose acts any of them may be legally liable. This section shall not require the Boy Scouts to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the City. In addition, the City shall not be responsible nor be held liable for any damage consequent upon the use, misuse, or failure of any City equipment, material, or supplies used by the Boy Scouts or anyone directly employed by the Boy Scouts. The acceptance or use of any such equipment, material, or supplies shall be construed to mean that the Boy Scouts accept the full responsibility for and in addition to paying for any loss or damage thereto, the Boy Scouts agree to exonerate, indemnify, and save harmless the City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, material, or supplies, whether such damage be to the employee or property of the Boy Scouts, the City or other persons, even though such equipment may be furnished, rented, or loaned to the Boy Scouts by the City. The Boy Scouts agree that should this License Agreement be declared of no force and effect, it will hold the City harmless for any and all losses to the Boy Scouts.

26. **Entire License Agreement.** This License Agreement contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings with respect to such subject matter.

27. **Representations.** No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this License Agreement. Neither party has relied on any verbal representations, agreements, or understandings not expressly set forth in this License Agreement.

The City specifically makes no warranties as to the legality or suitability of the use by the Boy Scouts. The Boy Scouts have made their own investigation of the property and the intended use, researched the legal issues, and have independently satisfied themselves that this License Agreement is proper as to form and legality. By signing this License Agreement, the Boy Scouts assume all risks associated with this use.

28. **Waiver.** Any waiver by any party of a default of any other party of this License Agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the parties which varies from the terms of this License Agreement shall be a waiver of any party's right to demand exact compliance with the terms of this License Agreement.

29. **Termination.** When deemed in the best interests of the City of Lincoln, the Mayor and City Council may terminate this License Agreement by 30 days written notice delivered to the Boy Scouts.


ATTEST:

CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

City Clerk

Mayor Coleen Seng

CORNHUSKER COUNCIL, INC.
OF THE BOY SCOUTS OF AMERICA,
a Nebraska non-profit corporation



Title: Assistant Scout Executive

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Coleen Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the City of Lincoln, Nebraska.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

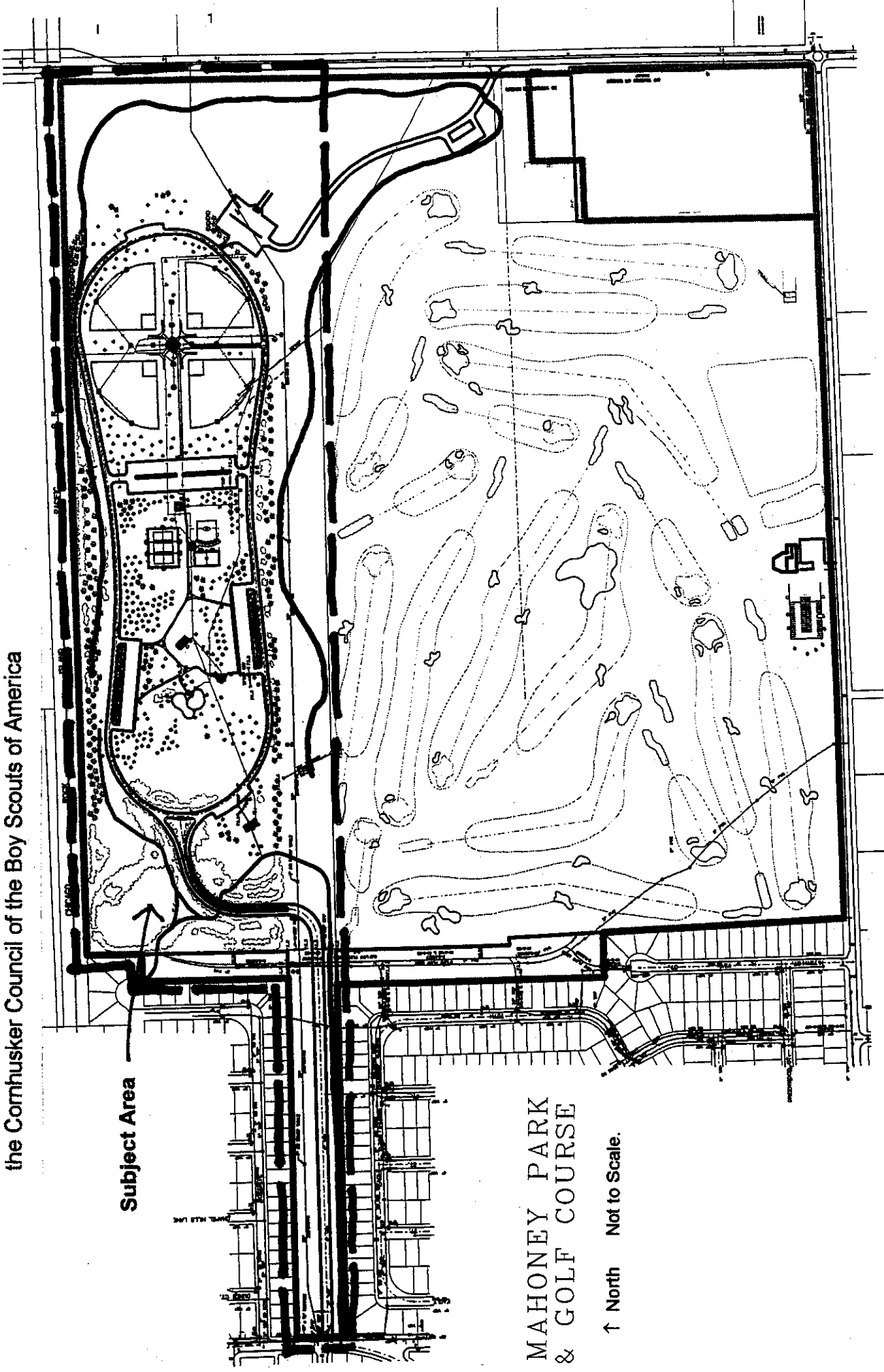
The foregoing instrument was acknowledged before me this 10th day of July, 2003, by Richard Stockton, of the Cornhusker Council, Inc. of the Boy Scouts of America, a Nebraska non-profit corporation, on behalf of the corporation.

Jeanne Bowling
Notary Public

070803mes



ATTACHMENT A: Area of Mahoney Park Subject to License Agreement with the Cornhusker Council of the Boy Scouts of America



Subject Area

MAHONEY PARK
& GOLF COURSE

↑ North Not to Scale.

GENERAL FACT SHEET

03R-179

BILL NUMBER

BRIEF TITLE

Renewal of License Agreement with Cornhusker Council of Boy Scouts of America for Lincoln Lights display in Mahoney Park

APPROVAL DEADLINE

REASON

DETAILS

POSITIONS/RECOMMENDATIONS

<p>The proposed resolution authorizes renewal of the license agreement with the Cornhusker Council of the Boy Scouts of America (Boy Scouts) for use of Mahoney Park for the annual "Lincoln Lights" holiday light display. The proposed license agreement extends for a period of ten years.</p> <p>The proposed license agreement includes the following revisions from the initial agreement:</p> <ol style="list-style-type: none"> 1. The park will be closed to vehicular traffic associated with normal park activities at 4:00 p.m. daily. 2. Foot traffic will be restricted to park pathways and trails after 5:00 p.m. daily. 3. A temporary concession may be set up providing food and/or non-alcoholic beverages during the event. 	Sponsor	Lynn Johnson
	Program Departments, or Groups Affected	All automated departments Parks & Recreation Dept.
	Applicants/Proponents	Applicant City Department Parks & Recreation Dept. Other Cornhusker Council of the Boy Scouts of America
<p>Discussion (Including Relationship to other Council Actions)</p> <p>In 1998 the City entered into a five-year license agreement with the Boy Scouts for use of Mahoney Park for the "Lincoln Lights" program. The agreement stated that the agreement could be extended, modified, or re-written at the end of the five-year period.</p>	Opponents	Groups or Individuals Basis of Opposition
	Staff Recommendations	<input checked="" type="checkbox"/> For <input type="checkbox"/> Against Reason Against
	Board or Commission Recommendation	BY <input type="checkbox"/> For <input type="checkbox"/> Against <input checked="" type="checkbox"/> No Action Taken <input type="checkbox"/> For with revisions or conditions (See Details column for conditions)
	CITY COUNCIL ACTIONS (For Council Use Only)	<input type="checkbox"/> Pass <input type="checkbox"/> Pass (As Amended) <input type="checkbox"/> Council Sub. <input type="checkbox"/> Without Recommendation <input type="checkbox"/> Hold <input type="checkbox"/> Do not Pass

